

AMENDED IN ASSEMBLY JANUARY 22, 1998

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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1384

**Introduced by Assembly Members Havice, Baca, Lempert,
and Napolitano**

(Principal coauthor: Assembly Member Escutia)

(Coauthor: Assembly Member Ortiz)

(Coauthors: Senators Karnette, McPherson, and Watson)

February 28, 1997

An act to amend Sections 11571 and 11573.5 of, and to add and repeal Section 11571.1 of, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 1384, as amended, Havice. Controlled substances: abatement.

Under existing law, the conduct of certain unlawful activities relating to controlled substances in any building constitutes a nuisance, which may be abated in an action brought by a city attorney or district attorney. Existing law also defines unlawful detainer by a tenant or subtenant to include the commission of a nuisance upon the premises or use of the premises for an unlawful purpose. The sale of a controlled substance on the premises or the use of the premises in furtherance of that activity is deemed to be such

a nuisance relating to unlawful detainer. The law relating to unlawful detainer sets forth a summary procedure by which a landlord may demand possession of the premises and evict the tenant or subtenant.

This bill would authorize a city attorney or district attorney to file an action for unlawful detainer against any person who is guilty of unlawful detainer by engaging in the above specified activities relating to controlled substances, subject to the procedural requirements contained in those provisions as well as additional procedural requirements prescribed in this bill wherein the court is authorized to issue a partial eviction, as specified. The bill would make this provision applicable only to specified court jurisdictions in Los Angeles County and repeal it as of January 1, 2002, unless a later enacted statute deletes or extends that date.

The bill also would require the city attorney and district attorney to maintain specified records of all actions filed pursuant to these provisions and, commencing January 1, 1999, to annually file copies thereof with the Judicial Council by January 30 of each year. The bill would require the Judicial Council thereafter to submit a brief report to the Senate and Assembly Judiciary Committees on or before January 1, 2001, summarizing the information collected thereby, and evaluating the merits of the pilot program established by these provisions.

Existing law also provides that with respect to a nuisance abatement action, the court may, under certain circumstances, issue orders to protect witnesses, order the closure of the premises pending trial, and order the defendant to provide relocation assistance to eligible tenants, and that these remedies are in addition to other existing remedies for nuisance abatement actions, including, but not limited to, certain specified remedies.

This bill would, in addition, specify that these provisions are in addition to existing remedies relating to the removal from the premises of a person conducting or maintaining a nuisance.

This bill would contain legislative findings as to the necessity of a special statute.



Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11571 of the Health and Safety
2 Code is amended to read:
3 11571. Whenever there is reason to believe that a
4 nuisance as described in Section 11570 is kept,
5 maintained, or exists in any county, the district attorney
6 of the county, in the name of the people, may, or the city
7 attorney of any incorporated city or of any city and
8 county, or any citizen of the state resident in the county,
9 in his or her own name, may, maintain an action to abate
10 and prevent the nuisance and perpetually to enjoin the
11 person conducting or maintaining it, and the owner,
12 lessee, or agent of the building or place, in or upon which
13 the nuisance exists, from directly or indirectly
14 maintaining or permitting the nuisance.
15 SEC. 2. Section 11571.1 is added to the Health and
16 Safety Code, to read:
17 11571.1. (a) To effectuate the purposes of this article,
18 the district attorney or city attorney may file, in the name
19 of the people, an action for unlawful detainer against any
20 person who is in violation of the nuisance or illegal
21 purpose provisions of subdivision 4 of Section 1161 of the
22 Code of Civil Procedure, with respect to a controlled
23 substance purpose. In filing this action, the district
24 attorney or city attorney shall utilize the procedures set
25 forth in Chapter 4 (commencing with Section 1159) of
26 Title 3 of Part 3 of the Code of Civil Procedure, except
27 that in cases filed under this section, the following also
28 shall apply:
29 (1) Prior to filing an action pursuant to this section, the
30 district attorney or city attorney shall give 15 calendar
31 days written notice to the owner or his or her agent,
32 requiring the owner or his or her agent to file an action
33 for the removal of the person who is in violation of the
34 nuisance or illegal purpose provisions of subdivision 4 of
35 Section 1161 of the Code of Civil Procedure with respect

1 to a controlled substance purpose. This notice shall
2 include sufficient documentation establishing a violation
3 of the nuisance or illegal use provisions of subdivision 4 of
4 Section 1161 of the Code of Civil Procedure. A copy of the
5 notice shall be sent to the tenant.

6 (2) Upon the failure of the owner or his or her agent
7 to file an action pursuant to this section, or having filed an
8 action, if the owner fails to prosecute it diligently and in
9 good faith, the district attorney or city attorney may file
10 and prosecute the action, and join the owner and his or
11 her agent as defendants in the action. This action shall
12 have precedence over any similar proceeding thereafter
13 brought by the owner or his or her agent, or to one
14 thereafter brought by the owner or his or her agent and
15 not prosecuted diligently and in good faith.

16 (3) If a jury or court finds the defendant tenant guilty
17 of unlawful detainer, the district attorney or city attorney
18 may be awarded costs in an amount not to exceed six
19 hundred dollars (\$600). These costs shall be assessed
20 against the defendant owner, and his or her agent to
21 whom notice was directed pursuant to paragraph (1), and
22 shall constitute a lien on the subject real property.

23 (4) Nothing in this article shall prevent a local
24 governing body from adopting and enforcing laws,
25 consistent with this article relating to drug abatement.
26 Where local laws duplicate or supplement this article, this
27 article shall be construed as providing alternative
28 remedies and not preempting the field.

29 (5) Nothing in this article shall prevent a tenant from
30 receiving relief against a forfeiture of a lease pursuant to
31 Section 1179 of the Code of Civil Procedure.

32 (b) In any proceeding brought under this section, the
33 court may, upon a showing of good cause, issue a partial
34 eviction ordering the removal of any person, including,
35 but not limited to, members of the tenant's household if
36 the court finds that the person has engaged in the
37 activities described in Section 11570. Persons removed
38 pursuant to this section shall be permanently barred from
39 returning to or reentering any portion of the entire
40 premises. The court may further order as an express



1 condition of the tenancy that the remaining tenants shall
2 not give permission to or invite any person who has been
3 removed pursuant to this subdivision to return to or
4 reenter any portion of the entire premises.

5 (c) This section shall only apply to the following courts
6 in the County of Los Angeles:

7 (1) Los Angeles Municipal Court downtown
8 courthouse for the Los Angeles Judicial District.

9 (2) Van Nuys Branch of the Los Angeles Judicial
10 District.

11 (3) Los Cerritos Municipal Court.

12 (4) *Huntington Park and South Gate courts in the*
13 *Southeast Judicial District of the Los Angeles Municipal*
14 *Court.*

15 (5) *Long Beach Municipal Court.*

16 (d) (1) *The city attorney and district attorney shall*
17 *maintain records of all actions filed pursuant to this*
18 *section, including the collection of the following*
19 *information:*

20 (A) *The number of notices provided pursuant to*
21 *paragraph (1) of subdivision (a).*

22 (B) *The number of times that an owner, upon notice,*
23 *files and fails to file an action following receipt of the*
24 *notice.*

25 (C) *The number of times that an owner is joined as a*
26 *defendant pursuant to this section.*

27 (D) *A brief record of the result of all actions filed*
28 *pursuant to this section.*

29 (2) *Commencing January 1, 2000, copies of the records*
30 *maintained pursuant to this section shall be filed annually*
31 *with the Judicial Council on or before January 30 of each*
32 *year. The Judicial Council shall thereafter submit a brief*
33 *report to the Senate and Assembly Judiciary Committees*
34 *on or before January 1, 2001, summarizing the*
35 *information collected pursuant to this section and*
36 *evaluating the merits of the pilot program established by*
37 *this section.*

38 (e) This section shall remain in effect only until
39 January 1, 2002, and as of that date is repealed unless a
40 later enacted statute deletes or extends that date.

1 SEC. 3. Section 11573.5 of the Health and Safety Code
2 is amended to read:

3 11573.5. (a) At the time of application for issuance of
4 a temporary writ pursuant to Section 11573, if proof of the
5 existence of the nuisance depends, in whole or part, upon
6 the affidavits of witnesses who are not peace officers,
7 upon a showing of prior threats of violence or acts of
8 violence by any defendant or other person, the court may
9 issue orders to protect those witnesses, including, but not
10 limited to, nondisclosure of the name, address, or any
11 other information which may identify those witnesses.

12 (b) A temporary writ issued pursuant to Section 11573
13 may include closure of the premises pending trial when
14 a prior writ does not result in the abatement of the
15 nuisance. The duration of the writ shall be within the
16 court's discretion. In no event shall the total period of
17 closure pending trial exceed one year. Prior to ruling on
18 a request for closure the court may order that some or all
19 of the rent payments owing to the defendant be placed
20 in an escrow account for a period of up to 90 days or until
21 the nuisance is abated. If the court subsequently orders
22 a closure of the premises, the money in the escrow
23 account shall be used to pay for relocation assistance
24 pursuant to subdivision (d). In ruling upon a request for
25 closure, whether for a defined or undefined duration, the
26 court shall consider all of the following factors:

27 (1) The extent and duration of the nuisance at the time
28 of the request.

29 (2) Prior efforts by the defendant to comply with
30 previous court orders to abate the nuisance.

31 (3) The nature and extent of any effect which the
32 nuisance has upon other persons, such as residents or
33 businesses.

34 (4) Any effect of prior orders placing displaced
35 residents' or occupants' rent payments into an escrow
36 account upon the defendant's efforts to abate the
37 nuisance.

38 (5) The effect of granting the request upon any
39 resident or occupant of the premises who is not named in
40 the action, including the availability of alternative

1 housing or relocation assistance, the pendency of any
2 action to evict a resident or occupant, and any evidence
3 of participation by a resident or occupant in the nuisance
4 activity.

5 (c) In making an order of closure pursuant to this
6 section, the court may order the premises vacated and
7 may issue any other orders necessary to effectuate the
8 closure. However, all tenants who may be affected by the
9 order shall be provided reasonable notice and an
10 opportunity to be heard at all hearings regarding the
11 closure request prior to the issuance of any order.

12 (d) In making an order of closure pursuant to this
13 section, the court shall order the defendant to provide
14 relocation assistance to any tenant ordered to vacate the
15 premises, provided the court determines that the tenant
16 was not actively involved in the nuisance activity. The
17 relocation assistance ordered to be paid by the defendant
18 shall be in the amount necessary to cover moving costs,
19 security deposits for utilities and comparable housing,
20 adjustment in any lost rent, and any other reasonable
21 expenses the court may deem fair and reasonable as a
22 result of the court's order.

23 (e) At the hearing to order closure pursuant to this
24 section, the court may make the following orders with
25 respect to any displaced tenant not actively involved in
26 the nuisance:

27 (1) Priority for senior citizens, physically handicapped
28 persons, or persons otherwise suffering from a permanent
29 or temporary disability for claims against money for
30 relocation assistance.

31 (2) Order the local agency seeking closure pursuant to
32 this section to make reasonable attempts to seek
33 additional sources of funds for relocation assistance to
34 displaced tenants, if deemed necessary.

35 (3) Appoint a receiver to oversee the disbursement of
36 relocation assistance funds, whose services shall be paid
37 from the escrow fund.

38 (4) Where a defendant has paid relocation assistance
39 pursuant to subdivision (d), the escrow account under

1 subdivision (b) may be released to the defendant and no
2 appointment under paragraph (3) shall be made.

3 (f) (1) The remedies set forth pursuant to this section
4 shall be in addition to any other existing remedies for
5 nuisance abatement actions, including, but not limited to,
6 the following:

7 (A) Capital improvements to the property, such as
8 security gates.

9 (B) Improved interior or exterior lighting.

10 (C) Security guards.

11 (D) Posting of signs.

12 (E) Owner membership in neighborhood or local
13 merchants' associations.

14 (F) Attending property management training
15 programs.

16 (G) Making cosmetic improvements to the property.

17 (H) Notwithstanding the provisions of Chapter 4
18 (commencing with Section 1159) of Title 3 of Part 3 of the
19 Code of Civil Procedure, removal from the premises of
20 any person conducting or maintaining the nuisance.

21 (2) At all stages of an action brought pursuant to this
22 article, the court has equitable powers to order steps
23 necessary to remedy the problem and enhance the
24 abatement process.

25 SEC. 4. The Legislature finds and declares that a
26 special law is necessary and that a general law cannot be
27 made applicable within the meaning of Section 16 of
28 Article IV of the California Constitution because of the
29 unique circumstances surrounding the drug problem in
30 the jurisdictions of the Los Angeles Municipal Court, the
31 Van Nuys Branch of the Los Angeles Judicial District, *the*
32 *Huntington Park and South Gate courts in the Southeast*
33 *Judicial District of the Los Angeles Municipal Court, the*
34 *Long Beach Municipal Court*, and the Los Cerritos
35 Municipal Court in Los Angeles County. The facts
36 constituting the special circumstances that distinguish
37 these court jurisdictions in Los Angeles County from
38 those in other counties are the severity of the problem

1 and the widespread use of rental housing to facilitate drug
2 trafficking.

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